

GUTRIDE SAFIER LLP

SETH A. SAFIER (State Bar No. 197427)

MARIE A. MCCRARY (State Bar No. 262670)

HAYLEY REYNOLDS (State Bar No. 306427)

100 Pine Street, Suite 1250

San Francisco, CA 94111

Telephone: (415) 639-9090

Facsimile: (415) 449-6469

KALI R. BACKER (admitted *pro hac vice*)

4450 Arapahoe Ave., Suite 100

Boulder, CO 80303

Telephone: (415) 639-9090

Facsimile: (415) 449-6469

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LISA CHONG AND ZACK SCHWARTZ,
as individuals, on behalf of themselves, the
general public and those similarly situated,

Plaintiffs,

v.

KIND LLC,

Defendant.

Case No.: 3:21-CV-04528-RGS

**ADMINISTRATIVE MOTION TO
CONDUCT THE NOVEMBER 18, 2021
HEARING IN PERSON (CIVIL LOCAL
RULE 7-11)**

HONORABLE RICHARD SEEBORG

1 The COVID-19 pandemic has made virtual hearings the primary means of resolving
2 most types of disputes arising in the course of civil litigation. However, as this Court
3 acknowledges, some hearings are better-suited to take place in person. *See* Court’s Notice Re:
4 Appearances and Continued Use of Zoom. The hearing on Defendant KIND LLC’s (“KIND”) Motion to Dismiss is one of those hearings. Plaintiffs request that the hearing scheduled for
5 November 18, 2021 take place in person pursuant to Local Rule 7-11.
6

7 The issue on KIND’s Motion to Dismiss is whether federal law preempts and bars
8 Plaintiffs’ claims from proceeding in court. Although Plaintiffs vehemently dispute that their
9 claims impose requirements that are different from or in addition to FDA requirements, the
10 issue stands to have serious ramifications in this case as well as other cases pending in the
11 Northern District of California. The Court recognized this reality in *Minor v. Baker Mills, Inc., et al.*, No. 3:20-CV-02901-RS when it vacated the hearing on Plaintiff’s Motion for
12 Class Certification “pending disposition of the motion to dismiss in *Chong, et al v. KIND LLC*, 3:21-cv-04528-RS.” *Minor*, ECF No. 100. KIND, too, has highlighted two other cases
13 in this district that the Court’s ruling stands to impact, including: *Brown, et al. v. The J.M. Smucker Co.*, No. 3:21-cv-6467-JCS (N.D. Cal.) and *Brown, et al. v. Nature’s Path Foods, Inc.*, No. 4:21-cv-5132-HSG (N.D. Cal.). *See* ECF No. 20 at p. 9.
14
15
16
17

18 Given the importance of the hearing and the issues at stake, Plaintiffs request that the
19 hearing occur in-person, as opposed to Zoom. Prior to filing this motion, counsel for Plaintiffs
20 contacted counsel for KIND, Dale Giarli, Daniel Queen and Keri Borders, to determine
21 whether they would agree to conduct the hearing in person. Counsel for KIND stated that they
22 opposed the motion.
23
24
25
26
27

1 Dated: November 8, 2021

2 **GUTRIDE SAFIER LLP**

3 /s/ Seth Safier

4 Seth A. Safier, Esq.

5 Marie McCrary, Esq.

6 Hayley Reynolds, Esq.

7 100 Pine Street, Suite 1250

8 San Francisco, CA 94111

9 Kali R. Backer, Esq.

10 4450 Arapahoe Ave., Suite 100

11 Boulder, CO 80303

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27